

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2419 of 2017

ORDER:

The present Criminal Revision Case is preferred by the sole accused officer in C.C.No.8 of 2016 on the file of the Special Judge for SPE & ACB Cases-cum-II Additional District & Sessions Judge, Nellore, questioning the order, dated 07.07.2017, passed in CrI.M.P.No.418 of 2016 in the said Calender Case, whereby and whereunder, the application filed by the complainant under Section 216 of the Code of Criminal Procedure seeking to frame an additional charge for the offence punishable under Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 (for short, 'the Act') was allowed.

Heard Sri Shaik Karimulla, learned counsel for the revision petitioner, and Sri Udaya Bhaskara Rao, learned Special Public Prosecutor for ACB.

It appears, in the aforesaid CrI.M.P filed by the complainant i.e., Inspector of Police, ACB, Nellore Range, Nellore, requesting the Special Court to frame an additional charge for the offence punishable under Section 13 (2) read with Section 13 (1) (d) of the Act along with Section 7 of the Act in the interest of justice, the averments made in the entire charge sheet were incorporated, but, however, the said application was resisted by the accused officer by filing a detailed counter setting forth

his defence which he perhaps intended to take in the main Calender Case itself.

It is not in dispute that originally, the learned Special Judge has framed charge punishable under Section 7 of the Act and, at that time, it appears, the learned Special Judge has not bestowed his attention as to whether the charge under Section 13 (2) read with Section 13 (1) (d) of the Act would arise or not. According to the learned counsel for the revision petitioner, the charge framed under Section 7 of the Act is available on the reverse side page of the charge framed under Section 13 (2) read with Section 13 (1) (d) by the Presiding Officer. The Presiding Officer who framed the earlier charge was different from the Presiding Officer who framed the present charge.

Learned counsel for the revision petitioner, no doubt, has drawn the attention to Sections 7 and 13 (2) read with Section 13 (1) (d) of the Act and tried to distinguish the **factual** aspect basing on the charge sheet averments. It is unnecessary to refer to the contentions or the averments made in the present revision case or the grounds of attack in framing the charge under Section 13 (2) read with Section 13 (1) (d) of the Act.

Learned Special Public Prosecutor would submit that no additional charge sheet was filed and in the charge sheet/complaint originally filed on 23.02.2016, it was pleaded to frame both the charges i.e., charges under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Act.

When both the charges were sought to be framed in the charge sheet itself, the learned Presiding Officer, while framing the charge under Section 7 of the Act leaving the charge under Section 13 (2) read with Section 13 (1) (d) of the Act, ought to have passed a detailed order as to why he was not inclined to frame the charge under Section 13 (2) read with Section 13 (1) (b) of the Act. But, such is not the situation. It appears, omission of framing of the said charge may be due to inadvertence or due to lack of care and caution that ought to be taken while framing charges, by the earlier Presiding Officer. In trap cases where there has been pre-trap proceedings associated with trap becoming successful and tainted amount was actually seized from the person of the accused officer, invariably, the charges under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Act ought to be framed, which was actually sought for by the complainant. Thus, there was mistake on the part of the Court below in omitting to frame charge under Section 13 (2) read with Section 13 (1) (d) of the Act when he has framed the charge under Section 7 of the Act, and the revision petitioner has taken advantage of the same by questioning the order of directing to frame the second charge or an additional charge under Section 13 (2) read with Section 13 (1) (d) of the Act.

Learned Special Public Prosecutor, placing reliance on a ruling in **K.L.Bakolia v. State through Director, Central Bureau of Investigation¹**, lays emphasis on the expression of the Honourable Supreme Court in paragraph '8' of the said ruling. It is unnecessary to

¹(2015) 8 SCC 395

refer to the said decision, as the law is well settled that in trap cases, both the charges are to be invariably framed.

Thus, there is no merit in the present Criminal Revision Case and the same is, accordingly, dismissed.

Miscellaneous applications, if any pending in the present revision, stand closed.

JUSTICE A.SHANKAR NARAYANA

16.11.2017

v v

